APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RAYMOND KEITH SKINNER, Appellant,	)	No. 14256
vs.	)	Sept. 22,
UNITED STATES OF AMERICA, Appellee.	)	1954

Appeal from the United States District Court of the Southern District of California, Central Division

---

Before: STEPHENS and FEE, Circuit Judges, and CLARK, District Judge.

CLARK, District Judge

An indictment was returned by the Grand Jury charging that defendant (Appellant here) knowingly failed and neglected to be inducted into the armed forces of the United States as so notified and ordered to do. Thereafter he was tried before the Court and convicted.

Upon registration (February 19, 1952) Appellant was classified as 1-A. A conscientious objector's form was requested but no appeal was taken from the 1-A classification. Thereafter Appellant married and the Board reclassified him 3-A when it was determined that he and his wife were expecting a child. Thereafter

the local Board was informed that the baby had been born prematurely and had died, and on April 24, 1953 the Board reclassified the Appellant as 1-A. Form 110 notifying the Appellant of the classification or reclassification was mailed and on May 6, 1953 he was ordered to report for induction. He was later granted a stay of induction because of hardship, but on June 5, 1953 was again ordered to report for induction. On May 19, 1953,—after the first order to report for induction,—he requested an interview with the local Board and appeared before the Board on May 22, 1953, at which time, by a vote of 2 to 0 the Board determined that the information presented did not warrant reopening his classification. Again on June 8, 1953 after the second order to report for induction, the Board received a letter from Appellant request a 1-AO classification. On this date after the Board had reviewed Appellant's file, by a vote of 2 to 0 it determined to take no action.

No appeal was taken from the original classification or either of the reclassifications.

It seems that the only question to be considered is whether it was necessary for the Appellant to appeal from the classification of the local Board.

In the case of *United States ex rel. La Charity v. Commanding Officer of United States Army Induction Center, Buffalo, N. Y.*, 142 Fed. 2d 381, the Court said:

> "Appeals are governed by Sec. 627 of the regulations. Subdivision (a) of Sec. 627.2 gives the right to 'appeal to a Board of appeal from any classifi-

cation of the registrant by the local Board', and subdivision (c) provides that the appeal must be taken 'within ten days after the date when the local Board mails to the registrant a Notice of Classification' . . .

"The Appellant urges that the action of the Board in continuing his 1-A classification after the hearing of April 12 was a new classification from which he should have been granted the right to appeal. Section 626.2 authorizes the local Board to consider anew a classification previously made but no provision of the statute or the regulations has been pointed out giving a right to appeal from a reconsideration which results in no change of classification. We are satisfied that no appeal lies from such a decision. The evil of a contrary rule is obvious; if there were an appeal from every refusal to change a classification, a registrant could interminably delay his induction by successive requests and appeals, as Judge Forman pointed out in *U. S. ex rel. Filomio v. Powell,* 38 Fed. Supp. 183."

The record shows that the Appellant was indicted for having failed and neglected to be inducted pursuant to the third classification, that is, the classification as made on April 24, 1953. If any errors were committed by the local Board in the classification of February 19, 1952, or in the classification of January 16, 1953, such errors were corrected by the new classification of April 24, 1953. At the time Appellant was classified on April 24, 1953, the Board had before it his claim as a conscientious objector, and it must be assumed that when the

local Board classified the Appellant on that date it considered the entire file, including his claim as a conscientious objector. Inasmuch as no appeal was taken from the classification of April 24, 1953 and inasmuch as the time for appeal had elapsed, the classification became final.

Subsequent to his last classification, registrant (Appellant) asked for and was granted a stay of induction. He asked for an interview with the local board, which interview was afforded him, and at the conclusion thereof the local Board decided the evidence as presented by the registrant did not warrant the reopening of the classification.

The classification of April 24, 1953 was a valid classification, and nothing was done thereafter that would or did in any way nullify that classification.

It would seem that the Appellant was given every right to appeal from the classification by the local Board, this he failed to do.

Although his objections may have had merit on an appeal from his classification, they were of no force before Court because waived by reason of his failure to appeal.

Conviction and Judgment AFFIRMED.

(Endorsed:) Opinion. Filed Sept. 22, 1954.
Paul P. O'Brien, Clerk.

APPENDIX B

[TITLE OF COURT AND CAUSE.]

JUDGMENT

Appeal from the United States District Court for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, it is known here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is, affirmed.

(ENDORSED) Judgment

Filed and entered September 22, 1954.

PAUL P. O'BRIEN, Clerk.

APPENDIX C

[TITLE OF COURT AND CAUSE.]

Excerpt from Proceedings of Saturday, January 15, 1955.

Before: STEPHENS and FEE, Circuit Judges,
CLARK, District Judge.

ORDER DENYING PETITION FOR REHEARING

On consideration thereof, and by direction of the Court, IT IS ORDERED that the petition of appellant, filed October 19, 1954, and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.

APPENDIX D

[TITLE OF COURT AND CAUSE.]

STATUTES AND REGULATIONS INVOLVED

Section 1(c) of the Act.

Section 1(c) of the Universal Military Training and Service Act (50 U. S. C. App. (Supp. V) §451(c)) provides:

"The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy."—June 24, 1948, ch. 625, title I, §1, 62 Stat. 604, amended June 19, 1951, ch. 144, title I, §1(a) 65 Stat. 75.

Section 6(j) of the Act

Section 6(j) of the act (50 U. S. C. App. (Supp. V) §456(j), 65 Stat. 75, 83, 86) provides:

"Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme

Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in Section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of Section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall

be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientously opposed to participation in such noncombatant service, he shall in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in Section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of Section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors."—50 U. S. C. App. (Supp. V) §456(j), 65 Stat. 75, 83, 86.

Section 12(a) of the Act

Section 12(a) of the act (50 U. S. C. App. (Supp. B) §462(a)) provides:

" . . . Any . . . person . . . who . . . refuses . . . service in the armed forces . . . or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title . . . shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment . . . "

Section 1622.1(d) of the Regulations

Section 1622.1(d) of the Selective Service Regulations (32 C. F. R. §1622.1(d) (1951 Rev.)) provides:

"*General Principles of Classification.*— . . . (d) In classifying a registrant there shall be no discrimination for or against him because of his race, creed, or color, or because of his membership or activity in any labor, political, religious, or other organization. Each such registrant shall receive equal justice."

Section 1622.11 Class I-A-O

Section 1622.11 Class I-A-O, provides:

"*Conscientious Objector Available for Noncombatant Military Service Only.*—(a) In Class I-A-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found,

by reason of religious training and belief, to be conscientiously opposed to combatant training and service in the armed forces."

Section 1622.14 of the Regulations

Section 1622.14 of the Selective Service Regulations (32 C. F. R. §1622.14 (1951 Rev.)) provides:

"*Conscientious objector available for civilian work contributing to the maintenance of the national health, safety, or interest.*—(a) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to both combatant and noncombatant training and service in the armed forces."

Section 1622.30 Class III-A

Section 1622.30 Class III-A provides:

"*Registrant with a Child or Children; and Registrant Deferred by Reason of Extreme Hardship and Privation to Dependents.*—(a) In Class III-A shall be placed any registrant who prior to August 25, 1953, has submitted evidence to the local board which establishes to the satisfaction of the local board that he has a child or children with whom he maintains a bona fide family relationship in their home. Such a registrant shall remain eligible for Class III-A so long as he maintains a bona fide family relationship with such child or children in their home. (b) In Class III-A shall be placed

any registrant whose induction into the armed forces would result in extreme hardship and privation (1) to his wife, divorced wife, child, parent, grandparent, brother, or sister who is dependent upon him for support, or (2) to a person under 18 years of age or a person of any age who is physically or mentally handicapped whose support the registrant has assumed in good faith; provided, that a person shall be considered to be a dependent of a registrant under this paragraph only when such person is either a citizen of the United States or lives in the United States, or its Territories, or possessions.

Section 1624.2(b) of the Regulations

Section 1624.2(b) of the Selective Service Regulations (32 C. F. R. §1624.2(b) (1951 Rev.)) provides:

"*Appearance Before Local Board.*—(b) At any such appearance, the registrant may discuss his classification, may point out the class or classes in which he thinks he should have been placed, and may direct attention to any information in his file which he believes the local board has overlooked or to which he believes it has not given sufficient weight. The registrant may present such further information as he believes will assist the local board in determining his proper classification. Such information shall be in writing, or, if oral, shall be summarized in writing and, in either event, shall be placed in the registrant's file. The information furnished should be as concise as possible under the circumstances. The member or members of the local

board before whom the registrant appears may impose such limitations upon the time which the registrant may have for his appearance as they deem necessary."

Section 1625.1 of the Regulations

Section 1625.1 of the Selective Service Regulations (32 C. F. R. §1625.1 (1951 Rev.)) provides:

"*Classification Not Permanent.*—(a) No classification is permanent."

Section 1625.2 of the Regulations

Section 1625.2 of the Selective Service Regulations (32 C. F. R. §1625.2 (1951 Rev.)) provides:

"*When Registrant's Classification May Be Reopened and Considered Anew.*—The local board may reopen and consider anew the classification of a registrant (1) upon the written request of the registrant, the government appeal agent, any person who claims to be a dependent of the registrant, or any person who has on file a written request for the current deferment of the registrant in a case involving occupational deferment, if such request is accompanied by written information, presenting facts not considered when the registrant was classified, which, if true, would justify a change in the registrant's classification; or (2) upon its own motion if such action is based upon facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; provided, in either event, the classification of a registrant shall not be reopened after the local board

has mailed to such registrant on Order to Report for Induction (SSS Form No. 252), unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control."

Section 1625.4 of the Regulations

Section 1625.4 of the Selective Service Regulations (32 C. F. R. § 1625.4 (1951 Rev.)) provides:

"*Refusal to Reopen and Consider Anew Registrants's Classification.*—When a registrant, any person who claims to be a dependent of a registrant, any person who has on file a written request for the current deferment of the registrant in a case involving occupational deferment, or the government appeal agent files with the local board a written request to reopen and consider anew the registrant's classification and the local board is of the opinion that the information accompanying such request fails to present any facts in addition to those considered when the registrant was classified or, even if new facts are presented, the local board is of the opinion that such facts, if true, would not justify a change in such registrant's classification, it shall not reopen the registrant's classification. In such a case, the local board, by letter, shall advise the person filing the request that the information submitted does not warrant the reopening of the registrant's classification and shall place a copy of the letter in the registrant's file. No other record of the receipt of such a request and the action taken thereon is required."

Section 1626.25 of the Regulations

Section 1626.25 of the Selective Service Regulations (32 C. F. R. §1626.25 (1951 Rev.)) provides:

"*Special Provisions When Appeal Involves Claim That Registrants Is a Conscientious Objector.*—(a) If an appeal involves the question whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the appeal board shall take the following action:

"(1) If the registrant has claimed, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and by virtue thereof to be conscientiously opposed to combatant training and service in the armed forces, but not conscientiously opposed to noncombatant training and service in the armed forces, the appeal board shall first determine whether or not such registrant is eligible for classification in a class lower than Class I-A-O. If the appeal board determines that such registrant is eligible for classification in a class lower than I-A-O, it shall classify the registrant in that class. If the appeal board determines that such registrant is not eligible for classification in a class lower than Class I-A-O, but is eligible for classification in Class I-A-O, it shall classify the registrant in that case.

"(2) If the appeal board determines that shch registrant is not eligible for classification in either a class lower than Class I-A-O or in Class I-A-O, the appeal board shall transmit the entire file to the United States Attorney for the judicial district in which the

office of the appeal board is located for the purpose of securing an advisory recommendation from the Department of Justice.

"(3) If the registrant claims that he is, by reason of religious training and belief, conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces, the appeal board shall first determine whether or not the registrant is eligible for classification in a class lower than Class I-O. If the appeal board finds that the registrant is not eligible for classification in a class lower than Class I-O, but does find that the registrant is eligible for classification in Class I-O, it shall place him in that case.

"(4) If the appeal board determines that such registrant is not entitled to classification in either a class lower than Class I-O or in Class I-O, it shall transmit the entire file to the United States Attorney for the judicial district in which the office of the appeal board is located for the purpose of securing an advisory recommendation from the Department of Justice.

"(b) No registrant's file shall be forwarded to the United States Attorney by any appeal board and any file so forwarded shall be returned, unless in the 'Minutes of Action by Local Board and Appeal Board' on the Classification Questionnaire (SSS Form No. 100) the record shows and the letter of transmittal states that the appeal board reviewed the file and determined that the registrant should not be classified in either

Class I-A-O or Class I-O under the circumstances set forth in subparagraphs (2) or (4) of paragraph (a) of this section.

"(c) The Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrant. The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the appeal board (1) that if the registrant is inducted into the armed forces, he shall be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of induction be ordered by his local board to perform for a period of twenty-four consecutive months civilian work contributing to the maintenance of the national health, safety, or interest. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the appeal board that such objections be not sustained.

"(d) Upon receipt of the report of the Department of Justice, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but it shall not be found to follow, the recommendation of the Department of Justice. The appeal board shall place in the Cover Sheet (SSS Form No. 101) of the registrant both the letter containing the recommendation of the Depart-

ment of Justice and the report of the Hearing Officer of the Department of Justice."

Section 1626.26 of the Regulations

Section 1626.26 of the Selective Service Regulations (32 C. F. R. §1626.26 (1951 Rev.)) provides:

"*Decision of Appeal Board.*—(a) The appeal board shall classify the registrant, giving consideration to the various classes in the same manner in which the local board gives consideration thereto when it classifies a registrant, except that an appeal board may not place a registrant in Class IV-F because of physical or mental disability unless the registrant has been found by the local board or the armed forces to be disqualified for any military service because of physical or mental disability.

"(b) Such classification of the registrant shall be final, except where an appeal to the President is taken; provided, that it shall not be construed as prohibiting a local board from changing the classification of a registrant in a proper case under the provisions of part 1625 of this chapter."

APPENDIX E

[TITLE OF COURT AND CAUSE.]

UNITED STATE DISTRICT COURT
DISTRICT OF CONNECTICUT

No. 8917 CRIMINAL

UNITED STATES OF AMERICA

vs.

ROBERT JAMES WILLIAMS

FINDING OF FACTS

MEMORANDUM OF OPINION

Defendant was indicted March 2, 1954 in one count for violation on April 20, 1953 of 50 App., USC 462(a) by wilfully and knowingly failing and refusing to submit to induction into the armed forces of the United States.

Defendant declined to be represented by counsel, pleaded not guilty, waived jury trial and was tried to the Court March 18 and 19, 1954. At the close of the trial defendant moved to dismiss the complaint, for a finding of not guilty and judgment of acquittal.

There is no question but that defendant was classified 1-A, ordered to report for induction, reported, and deliberately refused to be inducted.

Defendant filed his classification questionnaire December 18, 1951, making no claim of either ministerial

exemption or conscientious objection classification, asking 4-A classification on the basis of a hip fracture almost six years previously. He was classified 1-A January 9, 1952 and classification card mailed January 11, 1952. On December 5, 1952 defendant was sent by mail an order to report January 16, 1953 for armed forces physical examination. December 8, 1952, defendant was notified by letter that the date for physical examination was changed to January 23, 1953.

On January 5, 1953 the board received a letter from defendant asking a change of classification to that of minister, accompanied by affidavits from four Jehovah's Witnesses in support thereof. The letter and affidavits purported to be dated and notarized on various dates from November 18, 1952 to January 5, 1953.

The Board on January 5, 1953 sent defendant a conscientious objector form 150, telling defendant to send it in and they would consider reopening his case, but to report as scheduled for physical examination. Defendant appeared, was examined, was accepted and a certificate of acceptability mailed to him.

He then wrote the Board a letter received February 6, 1953 stating that he was appealing the certificate of acceptability on the ground of his claim to ministerial exemption although conceding that he was physically and mentally fit for service.

At a date not established, defendant returned the form 150 claiming to be opposed to participation in war as a minister of Jehovah's Witnesses.

The board scheduled a hearing on March 4, 1953 on his request for reopening his classification.

The board wrote State headquarters, apparently asking advice on procedure, or the presence of Deputy Director Hennessey at the hearing. Hennessey was on vacation, but the board was advised to forward the cover sheet if it desired an opinion on procedure. It did not do so.

Defendant appeared at the hearing March 4 and testified that he claimed to be a minister as all Jehovah's Witnesses were ministers, that he worked 25 to 30 hours a week or 100 hours a month at his house to house and street ministry, while working 40 hours a week at General Electric, earning about $70 a week. He was then almost 20 years of age, and had been interested in Jehovah's Witnesses and their teachings only since about February 1952.

One of the board members, Minotti, explained several times during the hearing that a minister was a full time job. It would appear that he believed that any outside employment would disqualify a minister from exemption.

Defendant explained at the hearing his conscientious scruples against participation in war, but twice told the board that he was not claiming deferment as a conscientious objector, but exemption as a minister.

The board voted 6-0 not to reopen defendant's case and so notified defendant on March 5, 1953. The board had told defendant both at the beginning and end of the

hearing that he had no right to appeal if they did not reopen.

March 16, 1953 defendant was notified to report on April 20, 1953 for induction. Defendant reported on the date required but refused to take the oath.

No appeal lies from a certificate of acceptability. The sole question here relates to the board's procedure in handling the request to reopen the 1-A classification so as to eliminate any possibility of appeal from its action.

In this case the board might well have been justified, upon a consideration of reclassification on the same evidence presented at the time of its consideration of whether or not to reopen Williams' classification, to disbelieve his claims as to his vocation, and to deny him deferment as a minister. He is clearly incorrect in his claim that his ordination by baptism and the belief of the Witnesses that all those baptized are ministers bring him within the exemption of the Act. The restricted definition of minister in the Act was intended to exclude those who, like Williams, carried on full time secular work, engaged in preaching and distributing literature only part time, and might be found not primarily in charge of ministering to the spiritual needs of a flock.

It should be borne in mind that there is no constitutional prohibition against the drafting of ministers of the gospel, and that the exemption was placed in the Act principally to avoid depriving the members of religious

groups of those on whom they depended for religious leadership and guidance.

One of the board, to be sure, felt, and so informed Williams, that the Act only exempted those who were engaged in religious activity 24 hours a day to the exclusion of all secular work. This is erroneous. The question is, which is the vocation, the religious or the secular work? It is not established that the majority of the board had the same interpretation. Williams had the burden of convincing the board that his vocation was religious, and failed to do so.

It may be that the failure to reopen to give consideration to William's formal claim of conscientious objection in Form 150 was not erroneous, since he twice in his oral testimony after filing the form disclaimed any intention to ask deferment as a conscientious objector.

Were this an appeal from the board's decision in a hearing on reclassification after reopening on the facts before it, we should probably find that there is no error on the merits in the refusal to reopen.

There persists, nonetheless, a question as to whether the review on the facts provided by the Act and regulations within the Selective Service System was accorded to this registrant, and if not, whether the review denied him might have changed his classification. Had this case been reopened and considered by the appeal board on the evidence as to conscientious objection it is hard to see how the board could have refused a deferment under the case of *Dickinson v. U. S.*, 346 U. S. 389,

unless there was an affirmative finding that the evidence lacked credibility. Had the boards made a finding that Williams' late found interest in religion, arising after his 1-A classification, was a sham and a parroting of formulae designed only to avoid the service required under the Act, the courts on the record here might well be required to uphold the board in spite of the *Dickinson* opinion. Since there was no reopening and no chance for appeal provided, however, we have no way of knowing how the board or a hearing officer on appeal, and an appeal board, would have found on this point.

Procedurally, the prejudicial error on the part of the board was in the failure to reopen and reclassify under 32 C. F. R. 1625, even if in the same 1-A classification, or to classify or decline to reclassify under 32 C. F. R. 1624, so that appeal time would again be allowed. As indicated below, 1624 does not appear to be applicable under the facts of this case.

If the board found the application to reopen was on its face frivolous or sham, only meant to delay induction, the regulations do not force it to reopen. On the face of the regulations, it was required to reopen, however, if the request to reopen was accompanied by written information presenting facts not considered when the registrant was classified, which, if true, would justify a change in the registrant's classification. 32 C. F. R. 1625.2.

A reading of 32 C. F. R. 1624 would appear to indicate that it is not applicable here, since far more than

the 10 days after notice of classification had passed before the registrant asked for a hearing. The board apparently did not consider it a hearing under 32 C. F. R. 1624, for it advised the registrant that he had no right to appeal from a refusal to reopen. If the hearing had been one under 1624, such a right would, however, have been the registrant's under 1624.2(e). The board apparently considered its hearing and interview with the registrant as an informal questioning to keep itself currently informed under 1625.1(c). This, however, ignored the written evidence in the request to reopen, the four affidavits of ministerial status and the form 150, which, if true, would have required reclassification and, therefore, required consideration by the board and action thereon reopening and either classifyingfi again as 1-A or reclassifying in another classification if the board found that course justified, with a right to appeal within the Selective Service System.

Determination of the proper classification of this registrant is for the Selective Service Boards. His claim of change of status to that of a minister raised a question which required the local board to reopen and give formal consideration to his claim and the evidence submitted in behalf thereof, thereby preserving his right to a review by the appeal board.

Since the board failed to do this, the order to report for induction was based on an invalid classification, and the defendant must be acquitted of the crime charged in this case.

The Court finds the defendant not guilty.

Dated at Hartford, Connecticut, this 2nd day of April, 1954.

J. JOSEPH SMITH
United States District Judge

(Underscoring supplied)

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statute and regulations involved	2
Statement	5
Argument	10
Conclusion	14

CITATIONS

Cases:

Dickinson v. *United States*, 346 U.S. 389	10
Falbo v. *United States*, 320 U.S. 549	10
Feuer v. *United States*, 208 F. 2d 719	10
Filomio, United States ex rel. v. *Powell*, 38 F. Supp. 183	12
La Charity, United States ex rel. v. *Commanding Officer, etc.*, 142 F. 2d 381	12
Olinger v. *Partridge*, 196 F. 2d 986	10
Rowland v. *United States*, 207 F. 2d 621	10
United States v. *Bartelt*, 200 F. 2d 385	12
United States v. *Clark*, 105 F. Supp. 613	13
Williams v. *United States*, 203 F. 2d 85, certiorari denied, 345 U.S. 1003	10

Statute and Regulations:

Universal Military and Training Act, Sec. 12(a), c. 625, 62 Stat. 622, 50 U.S.C. App. 642(a)	2
32 C.F.R. 1622.30(b)	2, 13
32 C.F.R. 1625.1(c)	2
32 C.F.R. 1625.2	3, 12
32 C.F.R. 1625.4	4, 12
32 C.F.R. 1625.13	5, 12
32 C.F.R. 1626.2	5, 10, 12

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 598

RAYMOND KEITH SKINNER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the district court appears at R. 5-8. The opinion of the court of appeals (Pet. App. 1-4) is reported at 215 F. 2d 767.

JURISDICTION

The judgment of the court of appeals was entered on September 22, 1954 (Pet. App. 5), and a petition for rehearing was denied on January 15, 1955 (Pet. App. 6). The petition for a writ of certiorari was filed on February 14, 1955. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether petitioner, who refused to be inducted into the armed forces and was charged with that offense, was entitled, at his trial, to challenge the validity of his I-A (available for military service) classification, in view of his failure to take an administrative appeal from the determination of his local board placing him in that category.

2. Whether, on the facts, petitioner's right to an administrative appeal was illegally impaired by the local board's refusal to reopen his case subsequent to its issuance of an order for his induction.

STATUTE AND REGULATIONS INVOLVED

Section 12(a) of the Universal Military Training and Service Act, c. 625, 62 Stat. 622, 50 U. S. C. App. 462(a), is set forth at Pet. App. 10.

The pertinent regulations of the Selective Service System are as follows:

32 C. F. R. 1622.30(b):

> In Class III-A shall be placed any registrant whose induction into the armed forces would result in extreme hardship and privation (1) to his wife, divorced wife, child, parent, grandparent, brother, or sister who is dependent upon him for support * * *.

32 C. F. R. 1625.1(c):

> The local board shall keep informed of the status of classified registrants. Registrants may be questioned or physically or

mentally re-examined, employers may be required to furnish information, police officials or other agencies may be requested to make investigations, and other steps may be taken by the local board to keep currently informed concerning the status of classified registrants.

32 C. F. R. 1625.2:

When registrant's classification may be reopened and considered anew. The local board may reopen and consider anew the classification of a registrant (1) upon the written request of the registrant, the government appeal agent, any person who claims to be a dependent of the registrant, or any person who has on file a written request for the current deferment of the registrant in a case involving occupational deferment, if such request is accompanied by written information presenting facts not considered when the registrant was classified, which, if true, would justify a change in the registrant's classification; or (2) upon its own motion if such action is based upon facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; provided, in either event, the classification of a registrant shall not be reopened after the local board has mailed to such registrant an Order to Report for Induction (SSS Form No.

252), unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control.

32 C. F. R. 1625.4:

Refusal to reopen and consider anew registrant's classification. When a registrant, any person who claims to be a dependent of a registrant, any person who has on file a written request for the current deferment of the registrant in a case involving occupational deferment, or the government appeal agent files with the local board a written request to reopen and consider anew the registrant's classification and the local board is of the opinion that the information accompanying such request fails to present any facts in addition to those considered when the registrant was classified or, even if new facts are presented, the local board is of the opinion that such facts, if true, would not justify a change in such registrant's classification, it shall not reopen the registrant's classification. In such a case, the local board, by letter, shall advise the person filing the request that the information submitted does not warrant the reopening of the registrant's classification and shall place a copy of the letter in the registrant's file. No other record of the receipt of such a request and the action taken thereon is required.

32 C. F. R. 1625.13:

> *Right of appeal following reopening of classification.* Each such classification shall be followed by the same right of appearance before the local board and the same right of appeal as in the case of an original classification.

32 C. F. R. 1626.2:

> *Appeal by registrant and others.* (a) The registrant * * * may appeal to an appeal board from any classification of a registrant by the local board * * *.
>
> * * * * *
>
> (c) The registrant * * * may take an appeal authorized under paragraph (a) of this section at any time within the following periods:
>
> (1) Within 10 days after the date the local board mails to the registrant a Notice of Classification (SSS Form No. 110).
>
> * * * * *

STATEMENT

Petitioner was convicted in the United States District Court for the Southern District of California of refusal to obey an order for induction into the armed forces of the United States, in violation of Section 12(a) of the Universal Military Training and Service Act. He was sentenced

to three years' imprisonment. (R. 3-4, 9). On appeal (R. 10-11), the judgment was unanimously affirmed (Pet. App. 5).

Pertinent facts from petitioner's Selective Service file, which was introduced in evidence as Government Exhibit 1 (R. 14-15), are as follows:

In his classification questionnaire filed with Local Board No. 107 in Los Angeles County, California, on November 23, 1951, petitioner stated that he was born on April 22, 1933; that he was a page boy and elevator operator in a hotel; and that he was conscientiously opposed to participation in war in any form (F. 4, 7, 11).[1]

On December 11, 1951, petitioner executed SSS Form No. 150 for conscientious objectors in which he stated that he adhered strictly to the Biblical commandment, "Thou shalt not kill"; that his mother and step-father were Jehovah's Witnesses; that he had received Bible training since childhood; and that he believed in the use of force only in self-defense (F. 16, 17, 18). He attached to the form a letter in which he stated that, although he was not a member of any religious sect, he was studying the belief of Jehovah's Witnesses and was attending their meetings when he could. He stated that most of his relatives were Jehovah's Witnesses, and that he believed "the way they teach is the truth." (F. 20.)

On February 19, 1952, petitioner was classified

[1] "F" refers to the longhand numbers at the bottom of the pages in Gov. Ex. 1.

I-A, and on the next day a Form 110, notifying him of this classification and his right to appeal, was mailed to him (F. 12). On March 4, 1952, petitioner filed a revised Form 150 repeating his conscientious objection to both combatant and noncombatant service (F. 23-27).

On April 29, 1952, the local board, after requesting petitioner's appearance, interviewed him personally (F. 12). Petitioner based his claim as a conscientious objector on the commandment, "Thou shalt not kill," and stated that killing was a grave sin. He stated he was not a Jehovah's Witness, but that he had been studying the Bible since he was 12 years old (F. 29). Upon reviewing the file, the board decided by a 2 to 0 vote that no action should be taken, the board minutes assigning as a reason that petitioner stated he was not a Jehovah's Witness (F. 12, 30). On the same day, another Form 110 was mailed to petitioner (F. 12). Petitioner did not appeal.

On January 16, 1953, after the board received notice of the pregnancy of petitioner's wife, he was reclassified III-A and Form 110 was mailed to him three days later (F. 12, 32). After petitioner's wife had a miscarriage, on April 24, 1953, he was again classified I-A and a Form 110 notifying him of this was mailed the same day (F. 12, 57).

On May 6, 1953, an order to report for induction on May 19 was mailed to petitioner (F. 12, 58). On May 14, 1953, the induction order was postponed until June 1953 by reason of the illness of petitioner's wife (F. 12, 59-63).

After petitioner requested an interview before the local board, he appeared on May 22. The minutes of the board disclose a finding that petitioner's wife was nervous and subject to crying spells. The board decided by a 2 to 0 vote that this information did not warrant a change in the I-A classification. Petitioner was given a written notice that the "facts presented do not warrant the reopening or reclassification of your case at this time." (F. 12, 64-66.)

After a new order to report for induction on June 19, 1953, had been mailed to petitioner, he wrote the board, on June 8, requesting a I-A-O classification (noncombatant military service). A part of the letter read: "I have always thought that military service of any kind was against my beliefs but I have come to find out that noncombatant service is alright." (F. 67-69, 77.) The board again reviewed the file and voted 2 to 0 to take no action, stating in the notice mailed to petitioner that the "facts presented do not warrant the reopening or reclassification of your case at this time" (F. 70, 77).

No appeal was taken or attempted from the original classification or from any of the reclassifications.

On June 19, 1953, the date designated for his induction, petitioner signed a written statement, "I refuse to be inducted into the Armed Services of the United States" (F. 73-76, 77).

Petitioner presented no evidence at the trial. In the oral argument on his motion for an ac-

quittal, petitioner's counsel contended that petitioner had been arbitrarily classified I-A and had been denied an administrative appeal after the classifications on April 29, 1952, May 22, 1953, and June 8, 1953. (R. 16-17.) The following colloquy occurred (R. 17):

> The Court: There has never been an appeal?
>
> Mr. Tietz [petitioner's attorney]: No, sir.
>
> The Court: Did he request an appeal?
>
> Mr. Tietz: No, sir. Now, my argument will be that the type of notice sent him was an incorrect type notice, and that did not advise him of his right to have an appeal. * * * the correct notice is the form 110 * * * which has printed on it, even though it is very tiny type, still it is there, and for anybody who is able to read, the information that the registrant has 10 days in which to appeal. Not being advised of that, I say that he has been deprived improperly of an appeal.

In its memorandum opinion (R. 5-8) the district court pointed out that petitioner had failed to appeal from any of his earlier classifications, and did not appeal from the I-A classification of April 24, 1953, upon the basis of which he was prosecuted, even though a Form 110 notified him that he could appeal within 10 days

In affirming, the court of appeals likewise held

that petitioner, by his failure to take an administrative appeal, waived his right to challenge the correctness of his I-A classification, entered April 24, 1953. It held further that petitioner's subsequent appearance before the board, which led the board to conclude that a reopening of the case was not warranted, did not "in any way nullify that classification" (Pet. App. 4).

ARGUMENT

1. Petitioner contends that he presented evidence adequate to show that he was a conscientious objector; that there was no evidence in the file to the contrary; and that it was accordingly improper to classify him I-A. The short answer is that petitioner has no basis for seeking judicial review on this point since he failed, after receiving proper notice, to exercise his right to take an administrative appeal.[2] See *Falbo* v. *United States*, 320 U. S. 549; *Rowland* v. *United States*, 207 F. 2d 621, 624-625 (C. A. 9); *Williams* v. *United States*, 203 F. 2d 85, 86 (C. A. 9), certiorari denied, 345 U. S. 1003; *Feuer* v. *United States*, 208 F. 2d 719 (C. A. 9); *Olinger* v. *Partridge*, 196 F. 2d 986 (C. A. 9); 32 C. F. R. 1626.2 (c) (1), *supra*, p. 5.

At the time of the first I-A classification on February 19, 1952, the board notified petitioner on Form 110 of his right to appeal within 10 days (F. 12). Petitioner did not do so.

[2] Since the case turns on the failure to exhaust administrative remedies, the correct interpretation of *Dickinson* v. *United States*, 346 U.S. 389, as applied to conscientious objectors instead of ministers (see Pet. 8), is not involved.

On April 29, 1952, following petitioner's personal appearance, his I-A classification was continued, the board minutes assigning as a reason that petitioner was not a Jehovah's Witness (F. 12, 30). Petitioner contends that this is an improper reason for denial of a conscientious-objector classification (Pet. 8-9). But the board merely mentioned that petitioner was not a Jehovah's Witness; it did not assign this as the sole reason for its action.[3] In any event, whether the board was right or wrong, petitioner could not attack the validity of the order without exhausting his administrative remedies. Although another Form 110 advising of appellate rights was mailed to petitioner on the same date, April 29, 1952 (F. 12), he did not appeal to raise the point.

Similarly, after the I-A classification on April 24, 1953, a Form 110 was mailed to petitioner. And once again he neglected to pursue his administrative remedies. (F. 12, 57.)

2. Petitioner asserts that the board should have set aside his order for induction and reopened his case following his personal appearance on May 22, 1953, at which time he represented that his wife was nervous and subject to crying spells. It

[3] Concededly, the board could not declare petitioner ineligible for conscientious-objector classification solely because he was not a Jehovah's Witness. However, if petitioner believed, as he stated, that the way Jehovah's Witnesses teach "is the truth" (F. 20) but nevertheless did not see fit to become a member of the sect, the board might reasonably construe this as some evidence showing that petitioner was not completely convinced of the validity of the conscientious-objector beliefs as taught by Jehovah's Witnesses.

is claimed that the board's refusal to reopen illegally deprived petitioner of the right to administrative review of the issue of hardship tendered by the representations.

The local boards are vested with broad discretion in determining whether a case should be reopened. Upon written request or upon its own motion, a board "may reopen and consider anew" the classification of a registrant if its prior action was based upon "facts not considered when the registrant was classified, which, if true, would justify a change . . ." Regulations, Sec. 1625.2, *supra,* page 3. When the board is "of the opinion" that this test is not met, "it shall not reopen the registrant's classification." Sec. 1625.4, *supra,* page 4.

There is no provision for appeal from a refusal to reopen. See Sections 1625.13, 1626.2, *supra,* page 5. The reason for this is patent. If the board were denied a broad discretion in passing upon requests for reconsideration, the expeditious procurement of men to serve in the armed forces would be seriously impaired. See *United States ex rel. La Charity* v. *Commanding Officer, etc.,* 142 F. 2d 381 (C. A. 2);[4] *United States* v. *Bartelt,* 200 F. 2d 385 (C. A. 7); *United States ex rel. Filomio* v. *Powell,* 38 F. Supp. 183 (D. N. J.). Under petitioner's view, a registrant would automatically obtain a right to appeal *de novo* when-

---

[4] Although the regulations have undergone some changes since the *La Charity* decision (see Pet 11), the changes are not pertinent to the question at hand.

ever the board denied an application for reconsideration. By filing a succession of such applications, the registrant could delay induction interminably.

It is not necessary to argue that a denial of reconsideration which, on its facts, constituted a gross abuse of discretion would be beyond correction by the courts. Cf. *United States* v. *Clark*, 105 F. Supp. 613 (W. D. Pa.). It is evident that the board's action here was well within the range of permissible discretion.

A registrant may be classified III-A when it appears that his induction would result in "extreme hardship and privation" to a dependent wife. Sec. 1622.30(b), *supra*, page 2. That petitioner's wife was nervous and subject to crying spells following her miscarriage (an event which the board had previously taken into account in deferring from May to June the effective date of the order of induction) would not be sufficient to show "extreme hardship and privation." A selective service law inevitably causes inconvenience, worry, disruption of normal living, and hardship to the dependents of countless "draftees." In making an exception for "extreme hardship and privation" the regulations plainly do not contemplate the ordinary hardships of psychological adjustment by the relatives of the draftee. In the circumstances, the board was fully warranted in concluding that petitioner's representations, if true, would not warrant a reclassification. In no event may the board's action be regarded as a gross abuse of that discretion conferred upon it by law.

CONCLUSION

For the reasons stated it is respectfully submitted that the petition for a writ of certiorari should be denied.

SIMON E. SOBELOFF,
Solicitor General.

WARREN OLNEY III,
Assistant Attorney General.

BEATRICE ROSENBERG,
ROBERT G. MAYSACK,
Attorneys.

MARCH 1955.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1955 335196 1129

APR 25 1955

No. 598

IN THE

SUPREME COURT

OF THE

United States

October Term, 1954

RAYMOND KEITH SKINNER,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR RECONSIDERATION

J. B. TIETZ
257 S. Spring Street
Los Angeles 12, Calif.
Counsel for Petitioner.

IN THE

SUPREME COURT

OF THE

United States

October Term, 1954

RAYMOND KEITH SKINNER, *Petitioner,* vs. UNITED STATES OF AMERICA. *Respondent.*	No. 598

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR RECONSIDERATION

To the Supreme Court of the United States:

Comes now the petitioner, by his attorney, and files this, his Petition for Reconsideration of the Order heretofore entered by this Court denying his petition for writ of certiorari.

Petitioner respectfully urges the Court to reconsider its action for the following reason:

Subsequent to the printing and filing of his Petition for Writ of Certiorari, the Court of Appeals for the Ninth Circuit decided *Chernekoff vs. United States,* ..... F. 2d ....., C.A. 9, decided February 24, 1955, rehearing denied March 24, 1955.

Said *Chernekoff* opinion held that the Government failed to prove a crime, when it presented only the following evidence of refusal to submit to induction: (1) A signed statement reading "I refuse to be inducted in the Armed Services of the United States" and (2) a letter by the inducting officer to his superior relating he had witnessed the verbal refusal. The Court of Appeals held that this was insufficient proof of the crime charged, particularly because the inducting officer had not given the selectee a second chance to refuse, after a warning of the penalty, this procedure being specifically required by the regulations.

The evidence in this petitioner's case concerning the abortive method of induction was precisely like Chernekoff's.

Furthermore, on March 21, 1955 the Court of Appeals granted bail to Arthur Clark (who had been in federal prison since January 3, 1955, the same Court having initially refused him bail) when a second application was presented citing *Chernekoff. Clark vs. United States,* No. 14634, 9th Cir.

Also, on March 30, 1955 the Court of Appeals granted bail to Nick Kaline (who had been in federal prison since January 3, 1955, the same Court having

initially refused him bail) when a second application was presented citing *Chernekoff. Kaline vs. United States,* No. 14635, 9th Cir.

It is true that this petitioner did not know of this point and did not raise it in the trial court, or before this time but petitioner believes that justice requires that the judgment of conviction be reconsidered in the light of this fact existing in the record of his case and in the light of the recent decision of the Ninth Circuit.

Wherefore, it is respectfully urged that the denial of the writ be reconsidered.

J. B. TIETZ
Attorney for Petitioner.

CERTIFICATE OF COUNSEL

This Petition for Reconsideration is filed in good faith and not for the purpose of delay.

J. B. TIETZ
Attorney for Petitioner.